

recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery period is modified by the transactions approved in the financing order.

(12) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

(13) "Local governing body" means a local board of trustees of a rural electric cooperative.

(14) "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

(15) "Nonbypassable rates or charges" means rates or charges approved by the commission imposed on a customer to pay the customer's share of transition costs or universal system benefits program costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

[REDACTED]

(17) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on [the effective date of this act], including the public utility's successors or assignees.

(18) "Transition bondholder" means a holder of transition bonds including trustees, collateral agents, and other entities acting for the benefit of that holder.

(19) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

(20) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

(21) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

(22) "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the

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implementation of [sections 1 through 31] or of federal law requiring retail open access or customer choice;

(b) those costs that include but are not limited to:

- (i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan and conservation investments made prior to universal system benefits charge implementation;
- (ii) nonutility and utility power purchase contracts, including qualifying facility contracts;
- (iii) existing generation investments and supply commitments or other obligations incurred before [the effective date of this act] and costs arising from these investments and commitments;
- (iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facility contracts and all costs, expenses, and reasonable fees related to issuing transition bonds; and
- (v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

[REDACTED]

[REDACTED]

[REDACTED]

(24) "Transition property" means the property right created by a financing order including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under [sections 1 through 31] or assignable pursuant to a financing order is only a contract right.

(25) "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

(26) "Transmission services provider" means a person controlling or operating transmission facilities.

(27) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits program costs.

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(28) "Universal system benefits programs" means public purpose programs

- (a) cost-effective local energy conservation;
- (b) low-income customer weatherization;
- (c) renewable resource projects and applications, including those that capture unique social and energy system benefits or provide transmission and distribution system benefits;
- (d) research and development programs related to energy conservation and renewables;
- (e) market transformation designed to encourage competitive markets for public purpose programs; and
- (f) low-income energy assistance.

(29) "Utility" means any public utility or cooperative utility.

**Section 4. Pilot programs.** (1) Except as provided in [sections 5(4) and 201, beginning July 1, 1998, utilities shall conduct pilot programs using a representative sample of their residential and small commercial customers. A report describing and analyzing the results of the pilot programs must be

(2) Utilities shall use pilot programs to gather necessary information to determine the most effective and timely options for providing customer choice. Necessary information includes but is not limited to:

- (a) the level of demand for electricity supply choice and the availability of market prices for smaller customers;
- (b) the best means to encourage and support the development of sufficient markets and bargaining power for the benefit of smaller customers;
- (c) the electricity suppliers' interest in serving smaller customers and the opportunities in providing service to smaller customers; and
- (d) experience in the broad range of technical and administrative support matters involved in designing and delivering unbundled retail services to smaller customers.

**Section 5. Public utility — transition to customer choice — waiver.** (1) A public utility shall, except as provided in this section, adhere to the following deadlines:

- (a) On or before July 1, 1998, all customers with individual loads greater than 1,000 kilowatts and for loads of the same customer with individual loads at a meter greater than 300 kilowatts that aggregate to 1,000 kilowatts or greater must have the opportunity to choose an electricity supplier.
- (b) Subject to subsection (2), and as soon as is administratively feasible but before July 1, 2002, all other public utility customers must have the opportunity to choose an electricity supplier.



(2) (a) Except as provided for in subsection (3), the Commission may determine that additional time is necessary for customers identified in subsection (1)(b); however, the implementation of full customer choice may not be delayed beyond July 1, 2004.

(b) A determination by the commission that additional time is necessary for subsection (1)(b) customers must be made at least 60 days in advance of the scheduled date and must be based on one or more of the following considerations:

- (i) implementation would not be administratively feasible;
- (ii) implementation would materially affect the reliability of the electric system; or

(3) Except as provided in [sections 22 and 34 through 44], a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River, may:

(a) defer compliance with [sections 1 through 31] until a time that the public utility can reasonably implement customer choice in the state of the public utility's primary service territory, except that the public utility shall file a transition plan pursuant to [section 6] to provide transition to customer choice on or before July 1, 2002, and must have completed the transition period to customer choice by July 1, 2006; and

(b) petition the commission to delay the public utility's transition plan filing until July 1, 2004.

(4) Upon a request from a public utility with fewer than 50 customers, the commission shall waive compliance with the requirements of [sections 4, 6 through 12, 22, and this section].

**Section 6 . Public utility — transition plans.** (1) All public utilities, pursuant to [sections 1 through 31], shall submit a transition plan to the commission [REDACTED] the date by which any customers of the public utility are entitled to choice of electricity supplier pursuant to [section 5]. The commission may develop a schedule for public utilities that are required to file plans. The transition plan must demonstrate that the public utility meets all the requirements of [sections 1 through 31].

(2) The commission shall develop a procedure schedule that includes:

(a) a preliminary transition plan determination including the commission's findings on whether the plan is complete and adequate subject to the requirements of [sections 1 through 31]; and

(b) an opportunity for a public utility to file a revised plan based on the preliminary determination.

(3) Unless waived by the public utility, the commission shall issue a final order approving, modifying, or denying the transition plan before 9 months after the

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date a public utility files a plan. All parties are afforded an opportunity for hearing before issuance of the final order.

(4) The commission shall process a request for approval of a transition plan pursuant to the contested case procedures of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

(5) On approval of the plan, the commission shall enforce the public utility obligations as incorporated in the plan and in the commission's final order.

**Section 7. Public utility — customer choice — continued service — education of customers.** (1) A customer is permitted to choose an electricity supplier pursuant to the deadlines established in [section 5]. Public utilities shall propose a method for customers to choose an electricity supplier.

(2) If a customer has not chosen an electricity supplier by the end of the transition period, a public utility shall propose a method in the public utility's transition plans for assigning that customer to an electricity supplier.

(3) A public utility may phase in customer choice to promote the orderly transition to a competitive market environment pursuant to the deadlines in [section 5].

(4) Public utilities shall educate their customers about customer choice so that customers may make an informed choice of an electricity supplier. This education process must give special emphasis to education efforts during the transition period.

**Section 8. Public utility — functional separation, divestiture, and nondiscrimination.** (1) To the extent that a public utility is vertically integrated, a public utility shall functionally separate the public utility's electricity supply, retail transmission and distribution, and regulated and unregulated retail energy services operations in the state of Montana, upon application to and approval from the commission.

[REDACTED]

(3) Public utilities shall:

(a) prevent undue discrimination in favor of their own power supply, other services, divisions, or affiliates, if any;

(b) prevent any other forms of self-dealing that could result in noncompetitive electricity prices to customers; and

(c) grant customers and their electricity suppliers access to the public utility's retail transmission and distribution system on a nondiscriminatory basis at rates, terms, and conditions of service comparable to the use of the retail transmission and distribution system by the public utility and the public utility's affiliates.

(4) The provisions of this section are satisfied if the public utility adopts and complies with a code of conduct consistent with federal energy regulatory commission approved code of conduct pursuant to 18 CFR, part 37. The commission shall promulgate rules relating to the codes of conduct.

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**Section 9. Public utility — distribution services.** (1) A public utility's distribution services provider shall:

(a) file tariffs that make distribution facilities available to all electricity suppliers, transmission services providers, and customers on a nondiscriminatory and comparable basis;

(b) build and maintain distribution facilities; and

(c) be an emergency supplier of electricity and related services.

(2) When a distribution services provider acts as an emergency supplier of electricity and related services to customers, the electricity supplier that should have provided the electricity shall reimburse the distribution services provider at the higher of a multiple of the cost or a multiple of the then-existing market rate for that electricity. The commission shall determine and authorize the multiple used. The market rate is the highest published rate for electricity purchased within the local load control area at the time that the distribution services provider provided the emergency supply. A distribution services provider is not required to purchase any reserve supply of electricity to fulfill this obligation.

**Section 10. Public utilities — transmission services.** For transmission services regulated by the commission, public utilities, through filed tariffs, shall make transmission services available for nondiscriminatory and comparable use by all electricity suppliers, by distribution services providers, and by customers.

**Section 11. Public utilities — electricity supply.** (1) On the effective date of a commission order implementing a public utility's transition plan pursuant to [section 6], the public utility shall remove its generation assets from the rate base.

(2) During the transition period, the commission may establish cost-based prices for electricity supply service for customers that do not have a choice of electricity supply service or that have not yet chosen an electricity supplier.

(3) If the transition period is extended, then the customers' distribution services provider shall:

(a) extend any cost-based contract with the distribution services provider's affiliate supplier for a term not more than 3 years; or

(b) purchase electricity from the market; and

(c) use a mechanism that recovers electricity supply costs in rates to ensure that those costs are fully recovered.

(5) If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to [section 24].

**Section 12. Public utilities transition costs and charges — rate moratorium.** (1) Subject to the provisions of this section, the commission shall allow recovery of the following categories of transition costs:



(b) receive credit toward that customer's annual universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits program expenditure and these internal expenditures must include but not be limited to:

(i) expenditures that result in a reduction in the consumption of electrical energy in the customer's facility; and  
(ii) those portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities; and

(c) customers making these expenditures must receive a credit against the customer's annual universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that customer's universal system benefits charges.

(8) A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission and the transition advisory committee provided for in [section 29]. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the transition advisory committee. The annual report must include but is not limited to:

(a) the types of internal utility and customer programs being used to satisfy the provisions of [sections 1 through 31];

(b) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2);  
and

(c) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

**Section 23. Commission authority — rulemaking authority.** (1) Beginning on the effective date of a commission order regarding a public utility's transition plan, the commission shall regulate the public utility's retail transmission and distribution services within the state of Montana, as provided in [sections 1 through 31], and may not regulate the price of electricity supply except as electricity supply may be procured during the transition period by the distribution function of a public utility for those customers that have not chosen an electricity supplier or for those customers that have not yet been assigned an electricity supplier. During the transition period, those procurements may include a cost-based contract from a supply affiliate or an unregulated division.

(2) If the transition period is extended for certain customers because the commission finds that workable competition in the electricity supply market does not exist, then the commission shall continue to regulate the provision of electricity supply by distribution services providers in accordance with [section 11].

[REDACTED]

[REDACTED]

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- [REDACTED]
- [REDACTED]
- (4) The commission shall license electricity suppliers and enforce licensing provisions pursuant to [section 241.
  - (5) The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.
  - (6) The commission shall establish just and reasonable rates through established ratemaking principles for public utility distribution and transmission services and shall regulate these services. The commission may approve rates and charges for electricity distribution and transmission services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with [sections 1 through 311, and on the public utility's transition plan.
  - (7) The commission shall certify that a cooperative utility has adopted a transition plan that complies with [sections 1 through 311. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility files for certification.
  - (8) The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices. .
  - (9) In addition to promulgating rules expressly provided for in [sections 1 through 311, the commission may promulgate any other rules necessary to carry out the provision of [sections 1 through 311.
  - (10) [Sections 1 through 311 do not give the commission the authority to:
    - (a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with [sections 1 through 31]; or
    - (b) compel any change to a cooperative utility's certification filing made pursuant to [sections 1 through 31].
- Section 24. Licensing. (1) Except as provided in [section 20], an electricity supplier shall file an application with and obtain a license from the commission before offering electricity for sale to retail customers in the state of Montana.
- (2) As a condition of licensing, an electricity supplier shall identify and describe its activities and purposes and the purposes of each of the electricity supplier's affiliates, if any, including whether an affiliate that owns or operates distribution facilities offers customer choice through open, fair, and nondiscriminatory access to the electricity supplier's or the electricity supplier's affiliate's distribution facilities.
  - (3) The commission may require electricity suppliers that provide electricity supply service to small customers to make a standard service offer that ensures that those customers have access to affordable electricity.
  - (4) The commission may require:
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